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Attorney for Plaintiffs  
HAWAII TRUCKERS-TEAMSTERS  
UNION PENSION PLAN AND  
HAWAII TEAMSTERS HEALTH  
AND WELFARE TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAII TRUCKERS-TEAMSTERS UNION ) CIVIL NO. 09-00463 SOM-BMK  
PENSION PLAN, by its Trustees, ALAN )  
SUGIMOTO, KINGSLEY WONG, RONAN ) MAGISTRATE JUDGE'S  
KOZUMA, and MILLIE DOWNEY; HAWAII ) FINDINGS OF FACT AND  
TEAMSTERS HEALTH AND WELFARE ) RECOMMENDATION TO  
TRUST, by its Trustees, MICHAEL R. ) ENTER DEFAULT JUDGMENT AND  
COAD, RONAN KOZUMA, DARREL ) AWARD DAMAGES AGAINST  
TAJIMA, ROBERT YU, MILLIE DOWNEY, ) DEFENDANTS YRC WORLDWIDE, INC.  
and MICHAEL COSTA, ) AND YRC INC. DBA YELLOW  
TRANSPORTATION

Plaintiffs,

vs.

YRC WORLDWIDE, JOHN DOES 1-10; ) DATE: January 6, 2010  
JANE DOES 1-10; DOE CORPORATIONS 1- ) TIME: 1:30 PM  
10; DOE PARTNERSHIPS 1-10; DOE ) MAGISTRATE  
GOVERNMENTAL AGENCIES 1-10, DOE ) JUDGE: Honorable Barry M. Kurren  
TRUSTS 1-10, ) NO TRIAL DATE SET

Defendants.

MAGISTRATE JUDGE'S FINDINGS OF FACT AND RECOMMENDATION TO ENTER  
DEFAULT JUDGMENT AND AWARD DAMAGES AGAINST DEFENDANTS YRC  
WORLDWIDE, INC. AND YRC INC. DBA YELLOW TRANSPORTATION

On October 1, 2009, the Plaintiffs HAWAII TRUCKERS-TEAMSTERS UNION PENSION PLAN ("Pension Plan") and HAWAII TEAMSTERS HEALTH AND WELFARE TRUST ("H&W Trust") (collectively referred to as "Trust Funds") filed a Complaint and thereafter filed an Amended Complaint on October 8, 2009 ("Amended Complaint"), for a declaratory judgment, assumpsit and damages against Defendants YRC WORLDWIDE, INC. and YRC INC. dba YELLOW TRANSPORTATION (hereinafter "Defendants"), alleging that Defendants materially breached the "Memorandum of Agreement", dated February 15, 2006 and "Tentative Agreement" dated April 10, 2008 attached as Exhibit "2" and Exhibit "3" respectively to the Amended Complaint filed October 10, 2009 (hereinafter referred to as "the Agreements") and related trust agreements. The Trust Funds claimed that Defendants failed to submit all monthly contribution reports, submit payments due on said reports, all notwithstanding demand by Trust Funds.

The action arises under the Labor-Management Relations Act, 1947, as amended, the Employee Retirement Income Security Act of 1974, and the Multiemployer Pension Plan Amendments Act of 1980. Jurisdiction is founded on questions arising thereunder and more specifically under 29 U.S.C. §§ 1145 and 1132(a) and (f).

Service of process of the Complaint was made on Defendants on October 5, 2009, as evidenced by the Return of Service filed herein on October 6, 2009. Service of process of the Amended Complaint was made on Defendants on October 9, 2009, as evidenced by the Return of Service filed herein on October 9, 2009. On November 27, 2009, default was entered against Defendants due to said Defendants' failure to answer or otherwise defend on the Amended Complaint.

On December 15, 2009, the Trust Funds filed a Motion for Approval of Fees and Costs and for Entry of Judgment, seeking an award of the sum \$9,643.70, which includes the principal sum of \$8,767.00, \$876.70 in liquidated damages to the Hawaii Teamsters Health and Welfare Trust; seeking an award of \$66,074.91 which includes the principal sum of \$60,068.10 and \$6,006.81 in liquidated damages to the Hawaii Truckers-Teamsters Union Pension Plan; and legal fees of \$1,144.00, costs in the amount of \$522.27, and general excise tax in the amount of \$56.92.

Parties have agreed to postpone collection on amounts owed subsequent to March 2009. Consequently, although sums are owed by Defendants for the months of June and July 2009 as detailed in the filings herein, Plaintiffs will reserve its claims for the time period after March 2009, per agreement of the parties. Thus approval of such agreement affects the amounts owed which necessitated the filing of the Second Amendment to the Declaration of Ross Koyanagi in Support of Motion for Approval of Fees and Costs and For Entry of Judgment on March 10, 2010.

On January 29, 2010 the Declaration of Ross Koyanagi was filed in support of said motion for fees and costs. On February 1, 2010, the Declaration of Ronan Kozuma was filed in support of said motion for fees and costs. On March 1, 2010 the Amendment to the Declaration of Ross Koyanagi in Support of Motion for Approval of Fees and Costs and For Entry of Judgment was filed.

### **FINDINGS OF FACT**

Having reviewed the Trust Funds' Motion for Approval of Fees and Costs and for Entry of Judgment, the Declarations of Carla Jacobs, Ronan Kozuma, Ross Koyanagi and Jared N. Kawashima and the exhibits thereto, and the record established in this action, the Court finds as follows:

1. On February 15, 2006 and April 10, 2008, Defendants entered into the Agreements with the Trust Funds;

2. Each of the Trust Funds was and is an express trust created by a written trust agreement subject and pursuant to 29 U.S.C. § 186 and a multiemployer plan within the meaning of 29 U.S.C. §§ 1002 and 1003.

3. Defendants breached the Agreements and are liable to the Trust Funds thereunder by their continuous failure to perform the terms of the Agreements, including: (1) failure to pay the amounts found by the Trust Funds for the period of April 1, 2006 through the present; (2) failure to pay the Trust Funds additional liquidated damages on late paid report contributions; and (3) failure to pay the Trust Funds their reasonable attorney's fees and costs incurred in enforcing the terms of the Agreement.

4. Defendants have not sought to set aside default in this action.

5. The Court finds that the fees sought by the Trust Funds of \$1,197.91 and that the rates, as described below, for Plaintiffs' legal fees performing work on this matter are reasonable and thus are allowing said legal fees as follows:

	<b>Actual Hours</b>	<b>Hourly Rate</b>	<b>Amount (\$)</b>
<b>Jared N. Kawashima (Partner)</b>	3.9	\$250.00	\$780.00
<b>Rhea-Liza Vega (Paralegal)</b>	5.6	\$65.00	\$364.00
			<hr/>
Subtotal			\$1,144.00
G.E. Tax on Fees (4.712%)			\$53.91
<b>Total Fees</b>			<b>\$1,197.91</b>

6. The Court finds that the total costs sought by the Trust Funds of \$525.28 (costs \$522.27 plus G.E.T. \$3.01) are reasonable.

7. Thus, as of January 8, 2010, there is known to be due, owing and unpaid to the H&W Trust from Defendants:

1.	Contributions (04/06-01/08) .....	\$ 9,225.00
2.	Overpayment of premiums incurred from 02/08 – 05/09 .....	(\$ 458.00)
3.	Liquidated Damages .....	<u>\$ 876.70</u>
	<b>SUBTOTAL</b>	<b>\$ 9,643.70</b>
4.	Legal fees .....	\$ 145.70
5.	Costs .....	\$ 66.52
6.	G.E.T. ....	<u>\$ 7.25</u>
	<b>SUBTOTAL</b>	<b>\$ 219.47</b>
	<b>TOTAL .....</b>	<b>\$ 9,863.17</b>

8. For the time periods identified below (excludes 03/09-07/09 and 08/09-12/09), there is known to be due, owing and unpaid to the Pension Plan from Defendants:

1.	Contributions (04/06-02/09) .....	\$60,068.10
2.	Liquidated Damages .....	<u>\$ 6,006.81</u>
	<b>SUBTOTAL</b>	<b>\$66,074.91</b>
3.	Legal fees .....	\$ 998.30
4.	Costs .....	\$ 455.75
5.	G.E.T. ....	<u>\$ 49.67</u>
	<b>SUBTOTAL</b>	<b>\$1,503.72</b>
	<b>TOTAL .....</b>	<b>\$67,578.63</b>

**RECOMMENDATION**

IT IS HEREBY RECOMMENDED that Default Judgment be granted in favor of HAWAII TEAMSTERS HEALTH AND WELFARE TRUST for a money judgment against Defendants, in the amount of \$9,863.17.

IT IS HEREBY RECOMMENDED that Default Judgment be granted in favor of HAWAII TRUCKERS-TEAMSTERS UNION PENSION PLAN for a money judgment against Defendants, in the amount of \$67,578.63.

DATED: HONOLULU, HAWAII, March 14, 2010.

IT IS SO FOUND AND ORDERED.



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

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In The U.S. District Court For The District Of Hawaii; Civil No. 09-00463 SOM-BMK; HAWAII TRUCKERS-TEAMSTERS UNION PENSION PLAN, et al. Plaintiffs vs. YRC WORLDWIDE, INC. et al. Defendants; *MAGISTRATE JUDGE'S FINDINGS OF FACT AND RECOMMENDATION TO ENTER DEFAULT JUDGMENT AND AWARD DAMAGES AGAINST DEFENDANTS YRC WORLDWIDE, INC. and YRC INC. dba YELLOW TRANSPORTATION*